



# Office of Command Counsel Newsletter

October 1999, Volume 99-5

## REDS: Marching To the AMC Workplace

AMC now has some two dozen trained REDS Teams chaired by EEO with membership from the CPAC and Legal communities.

Two 1-1/2 day training programs were held in September to expand REDS, the AMC Alternative Dispute Resolution Model for workplace disputes. **Steve Klatsky**, Assistant Command Counsel for ADR, was instrumental in workshop design and implementation, ably assisted by **Linda Mills** from AMCCC.

The twin objectives of the REDS Workshop were:

- o to describe the REDS program and various ADR processes contained in the Model

- o to discuss the roles and responsibilities of the REDS teams in the implementation of REDS.

A copy of the REDS Workshop Agenda is provided to you (Encl 1). Additionally, the REDS Deskbook Index is provided (Encl 2).

The attendees were very enthusiastic, sharing experiences with ADR and traditional employment litigation, actively participating in the

dialogue. We think that these objectives were met.

One exciting component of REDS implementation is a REDS Mentoring Program. Each REDS Team will have a mentoring group, either from HQ AMC or one of the three original AMC REDS pilot sites: ARL, TACOM-W, or ANAD. The mentors will provide assistance and lend support in the MSC or installation implementation of REDS.

The AMC attorneys who attended the REDS Training Workshop are: **Sharon Hill**, AMCOM; **Robert Blackwood**, CCAD; **Eddie Bennett**, LEAD; **Susan Harbort**, CECOM (counsel to LSSC); **Karen Tomaine**, TYAD; **Amy Armstrong**, IOC; **Les Renkey**, BGAD; **Susan Luther** (Navy), Crane; **Bert Howell**, MAAP; **John Walling**, RIA; **Helen Evans**, SIAD (paralegal); **CPT Humphrey Johnson**, TEAD; **Ellen Marchese**, WVA; **Laurie Kwiedorowicz**, SBCCOM; **Cathleen Perry**, APG; **Garth Terry**, PBA; **Jim Gilliam**, PBA; **Jim Savage**, SSC; **Laura Cushler**, STRICOM; **Carrie Schaffner**, TACOM-ACALA; **Dean Brown**, ARDEC; **Joe Martin**, RRAD.

A special thanks to those AMC attorneys who instructed and facilitated the workshop: **George Worman** and **Susan Bennett** (ANAD) and **Sam Shelton**, ARL.

A memo has been sent by **General Coburn** to the MSC Commanders who, in turn, will forward the memo to AMC installation and activity commanders reiterating his support for REDS, asking each to receive a REDS briefing from their newly-trained REDS Team.

### *In This Issue:*

<i>REDS Training Workshop .....</i>	<i>1</i>
<i>Blanket Purchase Agreements .....</i>	<i>3</i>
<i>Arsenal Act .....</i>	<i>4</i>
<i>Patent Licensing Agreements .....</i>	<i>5</i>
<i>EEOC ADR Regulations .....</i>	<i>7</i>
<i>Env: Affirmative Procurements .....</i>	<i>9</i>
<i>Env VTC Charts .....</i>	<i>10</i>
<i>Retirement Briefing Point Paper ...</i>	<i>11</i>
<i>OGE &amp; GAO and A-76 .....</i>	<i>12</i>
<i>New OGE Form 450 Exclusions ....</i>	<i>13</i>
<i>Anniston Army Depot Profile ...</i>	<i>14-15</i>
<i>Faces in the Firm .....</i>	<i>16</i>

# Tax Advisory:

## Hazardous Duty Pay Tax Consequences For DOD Personnel

**SERVICE MEMBERS:** DOD action does not end combat zone tax benefits for those actually serving in the Balkan combat zone or qualified hazardous duty area.

However, many serving in direct support of military operations in the Balkans lose imminent danger pay and consequently, combat zone tax benefits. Effective 15 September 1999, DOD terminated imminent danger pay (IDP) for:

(1) The Adriatic Sea and the Ionian Sea north of the 39<sup>th</sup> parallel.

(2) Italy: Land areas of Aviano Air Base; Cervia Air Base; Gioia del Colle Air Base; Trapani Air Base; Vicenza (all military installations and facilities); San Vito Air Station; Brindisi (all military installations and facilities); Naples (all military installations and facilities including the port of Naples); Sigonella and Augusta Bay (all military installations and facilities including the ports of Catania and Augusta Bay);

Gaeta (all military installations and facilities including the port of Gaeta); and Bari (all military facilities).

(3) Greece: Land area of Souda Bay (all military installations and facilities including the port of Souda Bay); Thessaloniki, land area within a 25 kilometer radius of 40o27'N, 22o59'E; waters of Themaikos Kolpos north of 40o15'N.

(4) Hungary: Taszar, land area within 50 kilometer radius of 46o23N, 17o55E.

To qualify for combat zone tax benefits, service members performing military service outside of a combat zone or qualified hazardous duty area must receive IDP. Therefore, service members serving in a direct support role in these areas no longer qualify for combat zone tax benefits (after 15 September 1999). This does not end such benefits for those actually serving in the combat zone or qualified hazardous duty area.

Thanks to **Alex Bailey**, DSN 767-8004, Chief, Legal Assistance, HQ AMC.

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Letters to the Editor are accepted. Length must be no longer than 250 words. All submissions may be edited for clarity.

# Acquisition Law Focus

## Blanket Purchase Agreements & "Mini-Competitions"

**Percival Park**, DSN 221-3304, CECOM Acquisition Center-Washington, has provided an excellent article on blanket purchase agreements (BPAs) and "mini-competitions" under GSA Federal Supply Schedule Contracts (Encl 3).

BPAs have long been useful for certain small purchases or simplified acquisitions. In recent years, they have become more popular for a specialized use, as adjuncts to General Services Administration Federal Supply Schedule (GSA FSS, or Schedule) contracts to obtain more favorable prices or other benefits for the BPA-issuing agency and designated users. Such BPAs are issued under FAR 8.404(b)(4) and 13.303-2(c)(3), and under provisions contained in the underlying Schedule contracts.

A normal BPA is not a complete contract in itself until an order is issued under it; until then, it is no more than a "charge account" (FAR 13.303-1(a)). As for those BPAs issued under Schedule contracts, they do not stand entirely on their own as separate and distinct contracts

even when orders are issued. Additionally, they are not subject to the relatively low purchase limitations that apply to normal BPAs (FAR 13.303-5(b)(1)). Despite that, the issuance of these BPAs and orders under them are not subject to normal competition requirements; because the underlying Schedule contract was competitively awarded, they are presumed to be issued pursuant to full and open competition, like any order against a Schedule contract.

The article addresses several important issues, including:

What standards govern the Government's conduct of such "mini-competitions"?—FAR's limited guidance is cited.

What has the GAO told us? The GAO has pointed out that agencies are not required to conduct competitions for purchases carried out in connection with GSA FSS contracts, but that, if they elect to do so, the GAO will review the agency's actions to make sure they were fair and reasonable, and consistent with the solicitation.

## List of Enclosures

1. REDS Workshop Agenda
2. REDS Training Deskbook Index
3. Blanket Purchase Agreements
4. The Arsenal Act
5. Reviewing Patent Licensing Agreements
6. EEOC and ADR
7. Env VTC Part 1
8. Env VTC Part 2
9. Env VTC Part 3
10. Env VTC Part 4
11. July 99 ELD Bulletin
12. Aug 99 ELD Bulletin
13. Retirement Briefing PP
14. OGE-GAO & A-76 Conflicts?
15. E-Mail and Geese and Golf
16. New OGE Form 450 Exclusions
17. Impartiality & Personal Relationships

# Acquisition Law Focus

## The Arsenal Act:

## To What Facilities Does It Apply?

The Secretary of the Army shall have supplies needed for the Department of the Army made in factories or arsenals owned by the United States so far as those factories or arsenals can make those supplies on an economical basis.” 10 United States Code section 4532 (a)

The Arsenal Statute is a fairly old, little used, and oft misunderstood piece of legislation. That said, it could very well be the key to maintaining the Army's Organic Industrial Base. The following statement by an Arsenal Statute sponsor best illustrates this point. “The purpose of this amendment is to compel the executive officers of the government to have government work done at such arsenals as [Watervliet] and to cease handing out appropriations to private manufacturers. It is perfect nonsense to allow [over \$20,000,000 in government investment] to go to waste and at the same time turn over work to be done by contract to private manufacturers.” 59 Cong. Rec. 4157 (1920).

Recent events regarding the ever-shrinking role of Government-owned facilities in acquisition planning have increased debate about the proper role of the Arsenal Statute. Is an Arsenal Statute analysis mandatory? To what extent if any does the Arsenal Act require “component breakout” with “system buys”? What does “supplies” mean? Must a facility currently make the supplies needed or simply be capable of making the needed supplies? What is meant by economical basis? Are “out-of-pocket” cost evaluations always required or is it sometimes appropriate to evaluate “fully burdened” costs? When “out of pocket” costs are evaluated, should Program Managers be billed on the basis of “fully burdened” costs? To what facilities does the Arsenal Statute apply? Those are but a few questions raised by the Arsenal Statute. The General Accounting Office has addressed many of the questions. Nevertheless, questions still abound.

IOC's **CPT Marc Howze**, DSN 793-8111, raises these

issues, providing a paper that highlights this issue: “To what facilities does the Arsenal Statute apply? Bottom line up front. The Arsenal Statute applies to Government-owned production facilities including arsenals, factories, ammunition plants and depots. This includes both Government-owned Government-operated (GOGO) and Government-owned Contractor-operated (GOCO) facilities (Encl 4 ).

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# Legal Review of Patent Licensing Agreements: A View from the IPCA & A Checklist for You!

AMC has recently experienced difficulties with patent license agreements (PLAs) drafted by AMC major subordinate commands (MSCs) (and other Army organizations) not being approved as written by the Intellectual Property Counsel of the Army (IPCA). AMCCC IP Counsel **COL Bill Adams**, DSN 767-3117, asked **Alan Klein**, the IPCA, if he would write an article concerning items that he looks for in reviewing a PLA for approval.

### Checklist

We thank Alan for providing an outstanding checklist covering license grant, licensee's performance, representations and warranties,

reports, modification and termination, sublicensing and reservation of rights (Encl 5 ).

A significant number of patent licensing agreements are being recommended for disapproval or modification by the IPCA because the license clauses appearing in the patent licensing agreements are not in compliance with the federal regulations. Either the required clauses are missing or the included clauses are inconsistent with the federal regulations. Before submitting patent licensing agreements to this office, all agreements should be reviewed carefully to ensure the propriety of the agreements.

### Role of the IPCA

The Intellectual Property Counsel of the Army is tasked with the final legal review of all license agreements under Army-owned patent or patent applications. See AR 27-60, Chapter 7 and AR 70-57, Chapter 1.

The federal regulations for licensing of Government owned inventions issued by the Department of Commerce require that all licenses include certain provisions.

These regulations appear at 37 CFR Part 404 and are restated at Chapter 3, Section IV, of AR 70-57 ( with "laboratory Director" substituted for "Federal agency" and "Army laboratory-owned" substituted for "federally owned").

# Employment Law Focus

## EO 13124: Amending the Civil Service Rules Relating To Federal Employees With Psychiatric Disabilities

President Clinton issued this Executive Order on June 4, 1999:

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 3301 and 3302 of title 5, United States Code, and in order to give individuals with psychiatric disabilities the same hiring opportunities as persons with severe physical disabilities or mental retardation under the Civil Service Rules, and to permit individuals with psychiatric disabilities to obtain Civil Service competitive status, it is hereby ordered as follows:

The Federal Government as an employer should serve as a model for the employment of persons with disabilities and utilize the full potential of these talented citizens.

The Civil Service Rules provide that persons with

mental retardation, severe physical disabilities, or psychiatric disabilities may be hired under excepted appointing authorities. While persons with mental retardation or severe physical disabilities may be appointed for more than 2 years and may convert to competitive status after completion of 2 years of satisfactory service in their excepted position, people with psychiatric disabilities may not.

The Office of Personnel Management (OPM) and the President's Task Force on Employment of Adults with Disabilities believe that the Federal Government could better benefit from the contributions of persons with psychiatric disabilities if they were given the same opportunities available to people with mental retardation or severe physical disabilities.

## NFFE Joins the AFL-CIO

The National Federation of Federal Employees has decision to join with the International Association of Machinists and Aerospace Workers union. This would make NFFE a part of the AFL-CIO. NFFE will be known as the NFFE Federal District of the IAMAW, AFL-CIO. As a part of the AFL-CIO, no other AFL-CIO unions can raid NFFE units.

NFFE was the largest independent Federal employee labor organization. NFFE represents many AMC employees. Its merger into the AFL-CIO is likely to produce an infusion of resources to the union, translating perhaps into new challenges for AMC managers. It is likely to produce stability in an organization that has had financial difficulties and significant executive personnel turnover during the 1990s.

# Employment Law Focus

## ADR at DOJ On the Rise!

The following are ADR Statistics (updated July 1, 1999) of the US Department of Justice Office of Dispute Resolution as posted on their webpage: <http://www.usdoj.gov/odr/textstatistics.html>

### ADR Processes Completed

FY 95 - 509  
FY 96 - 1231  
FY 97 - 1579  
FY 98 - 1800

### ADR Processes Pending

FY 95 - 0  
FY 96 - 744  
FY 97 - 1506  
FY 98 - 1499

These statistics are consistent with those compiled by other Federal agencies. As the lead ADR agency for the Federal government, you would expect DOJ to also lead the way in developing and implementing ADR programs. The DOJ website has some good material for those wishing further information on ADR.

## EEOC Issues ADR Regulation

### "Agencies Required to Establish or Make Available an ADR Program"

In 1998, the Equal Employment Opportunity Commission proposed to require all agencies to establish or make available an alternative dispute resolution (ADR) program for the EEO pre-complaint process. In addition, EEOC proposed to require that counselors advise aggrieved persons at the initial counseling session that they may choose between participation in the ADR program offered by the agency and the traditional counseling activities provided for in the current regulation.

After reviewing comments from the various agencies and employee organizations, the Commission has revised the ADR and counseling provisions in response to the comments. Agencies will be required to establish or make available an ADR program. The ADR program

must be available during both the pre-complaint process and the formal complaint process. Counselors will be required to inform individuals about the existence and nature of the agency's ADR program. The Commission encourages agencies to use ADR as a valuable tool in resolving EEO disputes at all stages of the EEO process.

One important provision provides additional time to the pre-complaint processing time when the parties choose to attempt resolution through use of ADR.

29 CFR 1614.105(f) states: Where the aggrieved person chooses to participate in an **alternative dispute resolution** procedure in accordance with paragraph (b)(2) of this section, the pre-complaint processing period shall be **90 days** (Encl 6).

## Conflict Resolution In Nine Easy Steps

### **1. Define the conflict.**

If two sides can define what they are fighting about, the chances increase that misperceptions will be clarified.

### **2. It is not you against me; it is you and me against the problem.**

By focusing on the problem, and not the person with the problem, a climate of cooperation, not competition, is enhanced.

### **3. List the relationship's many shared concerns and needs, as against one shared separation.**

All of us have been, are being or will be broken by life. If we are strong in the broken places, chances for mending increase. They will increase if the strengths of the relationship — the shared concerns and needs — are given more attention than the lone unshared separation.

### **4. When people have fought, do not ask what happened.**

This is an irrelevant question. They will answer with their version of what happened, almost always self-justifying. The better question is, "What did you do?" This elicits facts, not opinions. Misperceptions are clarified, not prolonged.

### **5. Work on active listening, not passive hearing.**

Conflicts escalate when partners try to talk more than listen and then only listen as a time-out for verbal rearming. Listening well is an act of caring.

### **6. Choose a place to resolve the conflict, not the battleground itself.**

Armies tend to sign peace treaties far from war zones. Too many emotions are there.

### **7. Start with what's doable.**

Restoration of peace cannot be done quickly. If it took a longtime for the dispute to begin, it will take time to end it. Work, on one

small doable rather than many large undoables.

### **8. Develop forgiveness skills.**

Forgiveness looks forward, vengeance looks backward. Again, it's anatomy: we have eyes in the front of our heads, not the back.

### **9. Purify our hearts.**

This is merely an elegant way of telling ourselves, "I need to get my own messy life in order before I can instruct others how to live."

Do these nine steps of nonviolent conflict resolution always work? No. Sometimes the conflict partners are so emotionally wounded or ideologically hidebound, that nothing can stop the violence. But large numbers of conflicts can be resolved without killing or wounding the other side, provided the strategies for peacemaking are known.

Source: Abstracted from Colman McCarthy in The Baltimore Sun



# Environmental Law Focus

## Start Watching How You Handle Your Light Bulbs

The U.S. Environmental Protection Agency (EPA) recently announced a rule which will cause most fluorescent and other lamps with toxic heavy metals, such as mercury and lead, to be identified as hazardous waste. These lamps will now be classified as D009 hazardous waste and must be managed under either full hazardous waste management regulations or under a subset of these regulations at 40 CFR Part 273, known as "Universal Waste."

The rule was published July 6, 1999, 64 Federal Register 36465, and becomes effective January 6, 2000. Some of the potential future problems with handling hazardous waste light lamps may be avoided by sending to a recycler, or switching to low-mercury fluorescent lamps that do not become hazardous waste. EPA's voluntary program, "Green Lights", encourages facilities to relamp to the more energy efficient fluorescent lamps, <http://www.epa.gov/greenlights.html>.

## Help for Buying Green - Affirmative Procurement

Last issue we reported on the efforts to implement Executive Order 13101: "Greening the Government Through Waste Prevention, Recycling and Federal Acquisition" and that EPA has developed guidance for inspections of Federal facilities for compliance with the buy-recycled program established under section 6002 of the Resource Conservation and Recovery Act (RCRA). EPA has indicated that it will include this area in its RCRA inspections as of July 1999. A good source of information on affirmative procurement requirements can be found at: <http://www.denix.osd.mil/denix/DOD/News/NAVSUP4C3/affirm.html>.

## Do You Have Your YELLOW BOOK Yet?

In the last issue we advised that EPA had revised, after 10 years, its *Yellow Book: guide to Environmental Enforcement and Compliance at Federal Facilities*. All attorneys who are responsible for environmental compliance should have this reference volume

on their bookshelf, or readily access through the Web. The latter has now become easier, as it is available at the following web sites: <http://www.dscr.dla.mil/htis/htis.htm> or <http://es.epa.gov/oeca/fedfac/yellowbk/index.html>.

# Environmental Law Focus

## For Those Who Missed It--AMC Environmental Team VTC

The Command Counsel Environmental Team recently presented an Environmental VTC for AMC ELSS and environmental personnel. Topics included environmental hot topics (CAA sovereign immunity update, Fort Ord CERCLA decision, and Langley AFB Geese case), CAA Risk Management Plan update, Lead Based Paint Hazards Update, and Recycled Material Purchasing requirements. Because of technical difficulties,

some MSCs were not able to connect. For all those who missed it, or do not have VTC capabilities, here are briefing charts of the information presented.

The first series of charts includes the following: Agenda, Hot topics, Non-Brac Transfers, Fort Ord CERCLA Case, and Punative Penalties (Encl 7 ).

The second series of charts concentrates on Lead

Based Paint and the Langley AFB Geese case. Also see the Ethics Focus for a discussion of the geese case as it pertains to use of E-Mail (Encl 8).

The third series of briefing charts highlightds two subjects: Risk Management Plans and Air Pollution Engineering (Encl 9).

The final series of charts discusses Affirmative Procurement (Encl 10 ).

## ELD Bulletins for July and August 1999

Environmental Law Division Bulletins for July and August 1999 are provided for those who have not received an electronic version from ELD or who have a general interest in Environmental Law.

The July issue highlights the case before the U.S. Court of Appeals for the Ninth Circuit: whether section 120 of the Comprehen-

sive Environmental Response, Compensation and Liability Act ("CERCLA") provides an independent authority for cleanups of federal facilities.

The case is *Fort Ord Toxics Project v. California Environmental Protection Agency et al.* and involves the clean up at the former Fort Ord, California (Encl 11).

The lead article in the August issue is the case of *Ross v. Federal Highway Administration*, a federal district court ruled that an agency's action could be both "arbitrary and capricious" under the National Environmental Policy Act (NEPA) and "substantially justified" for purposes of the Equal Access to Justice Act (EAJA) (Encl 12).

## Ethics Focus

### More on Contractors in the Workplace New HQ DA Memo...

It seems that the AMC initiative in dealing with the subject issue is having quite an impact on other parts of the Federal Government. This interest has resulted in AMC presentations and classes to ethics officials within and outside of DoD. Our training has been presented to program and procurement personnel of other agencies. DoD issued some 50- plus pages of guidance, previously posted to the AMC Document Library on JAGCNet, and in it you can recognize many of the principles that we teach, along with our examples.

The latest is a memorandum issued jointly by the Administrative Assistant to the Secretary of the Army and the Director of the Army Staff. The purpose is "to remind HQDA Principals and Army Commanders of their responsibilities relating to contractors in the workplace." It acknowledges the importance of contractor support, but warns against

contractor employees performing "inherently governmental functions." Taskings must be within the contract SOW. It explains that contractor employees must always identify themselves as such, and reminds us that contractors do not supervise Federal employees. It concludes with the principle that sexual harassment and other forms of discrimination in the workplace are unacceptable whether it involves contractor or Federal employees.

A copy of this memo has been posted to the AMC Document Library in JAGCNet. Here is the link to the AMC Forum. Before you get there, you will, of course, have to enter your log-on name and password, and then click on the link in the upper right corner for "AMC Document Library". You will find this document in the ETHICS category.

<http://jagcnet.army.mil/jagcnet/forums/amcforum.nsf>

### Retirement Briefing Point Paper

HQ AMC Ethics Team Chief, **Mike Wentink**, DSN 767-8003, provides an excellent Retirement Briefing Point Paper that can serve as a model for all AMC ethics counsel advising military or civilian personnel (Encl 13).

There are sections on pre-retirement matters such as negotiating for employment, working with foreign governments including corporations owned or controlled by foreign governments, provisions applicable to General Officers and Level V and VI SESs, procurement integrity rules, reporting requirements, provisions solely applicable to retired military members, as well as other general and miscellaneous issue

One specific reminder applicable to all former officers and employees is the following lifetime prohibition:

"May not, on behalf of someone else, try to influence any USG agency, officer or employee concerning the same particular matter involving a specific party in which you participated personally and substantially for the Government at any time ... for ever (18 USC 207(a)(1))."

# OGE & GAO in Conflict on "Conflicts" re A-76?

The Office of Government Ethics (OGE) says a conflict is not a conflict when OGE says it's not a conflict (5 CFR Sec. 2640.403(d)).

The General Accounting Office (GAO) says that a conflict is still a conflict even when OGE says that it's not!

Confusing? See OGE DAEOgram DO-99-035, dated 9 Sep 99 (Encl 14 ). **Mike Wentink** anticipated the problem. OGE is very concerned about the GAO decision in the matter of DZS/Baker LLC, B-281224, dated 12 Jan 99. In that case, the GAO sustained a protest against an USAF A-76 procurement where the decision was to do the work in-house. As you might recall, 14 of the 16 evaluators had their jobs at risk. As such, they were prohibited by 18 USC 208 from participating as evalua-

tors, because the official matter (the evaluation of the proposals) would have a direct and predictable affect on their financial interests, i.e., their jobs. However, 5 CFR Sec. 2640.403(d) exempts those employees from that conflict. OGE's position is that this exemption also means that there are no appearance problems, i.e., it "constitutes a determination under the standards of conduct that the interest of the Government in the employee's participation outweighs the concern that a reasonable person may question the integrity of agency programs and operations."

GAO started with the FAR premise that "the expenditure of public funds require[s] the highest degree of public trust and an impeccable standard of conduct." OGE faults this because this quotation does

not take into account the previous sentence that includes the phrase "except as authorized by statute or regulation." In effect, OGE says that its regulation authorizes this conflict.

OGE says that the GAO concluded that it was a conflict of interest for the affected employees to participate. Yes and No. The GAO did not conclude that there was an 18 USC 208 conflict of interest, or even that there was an appearance (5 CFR Sec. 2635.502). Rather, the GAO concluded that there was an "organizational conflict of interest (OCI)," and essentially decided in this case that the OCI created such appearances of, if not actual, impropriety so as to affect public trust in the integrity of the acquisition process.

## E-Mail and Geese and Golf Courses

The story in the provided article (Encl 15 ) provides an excellent example of how E-Mail can come back and haunt you, as it did personnel at Langley AFB. Did they

trap and kill 189 geese as an aircraft safety measure or to keep the golf course clean? Advise your clients about the use of E-Mail, and make use of a training videotape that

**Mike Wentink** has on the subject--only 1 AMC Legal Office has thus far. Thanks to **MAJ Mike Stump** for noticing the article.



## Ethics Focus

# New or Maybe Not Entirely New OGE Form 450 Exclusions

Army SOCO has published two additional exclusions from the requirement to file a Confidential Financial Disclosure Report (OGE Form 450). The exclusion was done by SECARMY Memorandum dated 20 Aug 99, and issued pursuant to 5 C.F.R. Sec. 2634.905 (Encl 16 ).

### IMPAC Card Holders

1) Actually, the first is not an entirely new exclusion. Rather, it builds on and expands the JER 7-300b.(2) exclusion of non-contract office personnel who are involved in procurement matters of \$2,500, or less, each time, and \$20,000, or less, per year. The expansion applies **ONLY** to IMPAC card holders. For IMPAC card holders, the SECARMY Memo eliminates the single action criteria (\$2,500 or less) and sets only a per annum criteria of \$100,000. This exclusion now applies even if the IMPAC card holder works in the contracting or procurement office. But, it does not apply if the IMPAC card holder has a

warrant, administers or monitors grants or other federally conferred benefits, or regulate or audit entities. This expansion does not apply to requirements generators, those who might accept and sign off on deliveries, or who might oversee the performance of small contracts... they still are governed by the \$2,500/\$20,000 rule... only to IMPAC card holders.

### Special Government Employees

(2) Secondly, as an exclusion from the general requirement for special Government employees (18 U.S.C. 202(a)), as required by 5 C.F.R. Sec. 2634.904(b), academic interns are no longer have to file, if they would only file because they are a SGEs. (If you have not required your academic interns to file OGE Forms 450 as SGEs, don't worry... I don't think that anyone else was either, to include the Office of Government Ethics. This exclusion "legitimizes" practice).

## Impartiality & Personal Relationships

In the business section of "The Washington Post," an interesting situation is posed in the "On the Job" column of the 28 July 1999 issue. Two employees in a Federal agency have a close, personal relationship. One of the employees in this relationship received a promotion, and she selected the other employee in the relationship to work for her... which was also a promotion for the second employee.

The answer set out in the column appears correct as far as it goes: there are OPM rules, but they apply only to marriage partners or other familial relationships. But, the OPM rules do not apply in this type of situation. Too bad; it reflects bad judgment, but the OPM rules don't apply.

But, **Mike Wentink** suggests that this answer does not go far enough... and, as ECs, you all know that! The "Standards of Ethical Conduct" govern this situation. There is definitely a "covered relationship" here as defined by 5 C.F.R. Sec. 2635.502(b)(1). It might seem that it does not *exactly* fit the definition, but 5 C.F.R. Sec 2635.702(d) brings this relationship under Sec. 2635.502. For more see (Encl 17 ).

# ***AMC Legal Office Profile***

## **Anniston Army Depot, Anniston, Alabama**

**N**estled in the foothills of the Appalachian Mountains in northeast Alabama, Anniston Army Depot (ANAD) occupies over 25 square miles of land, encompassing more than 18,000 acres of woodland and 10 acres of lakes and streams. Although rural in locale, ANAD is easily accessible by road, rail, and air. The ANAD currently has 2,647 civilian employees with a \$260M operating budget and a \$120M payroll.

### **The Depot Mission**

From its origin in 1942 as an ammunition receiving, shipping, and storage depot, ANAD has transformed into a state-of-the-market maintenance facility. Although ANAD is a multi-mission installation, it is most frequently recognized for its heavy combat vehicle expertise. From the M48 tank of the 1950's to the M1 Series Battle Tank of today, ANAD has rightfully earned its reputation as "The Tank Rebuild Center of the World." But, we're not just tanks anymore! ANAD is presently the only

Small Arms Rebuild Center for our nation's Army. Whether it's rifles, pistols, or weapon-related hardware, ANAD's small arms repair facility possesses the skills and equipment necessary to satisfy our customer's needs. ANAD has also taken the lead in establishing partnerships and teaming arrangements with private industry. Its unique skills, equipment, and facilities, coupled with its diversity, have proven to make ANAD a prime target for teaming and partnering arrangements for defense and nondefense related items. ANAD is also a storage site for 7.1% of the nation's chemical weapons stockpile.

### **The Legal Office Mission Statement**

The Anniston Army Depot Legal Office will deliver quality legal counseling and representational services to our clients in a professional and timely manner; we will remain responsive to our clients' current and future needs; and our work product will reflect the highest credit upon our people, the Depot, and the Army.

### **The Legal Office People**

The ANAD Legal Office family consists of four attorneys and two paralegals. This close-knit family has a combined total of 88 years of service in this same office - talk about dedication!!

Les Mason (25 years) -

Les has been assigned to AMC as the chief legal counsel at ANAD since Oct 73. Four years were on active duty as the Depot Judge Advocate, and the balance, except for 8 months of active duty during the Persian Gulf War, were as the civilian supervisory chief counsel. His area of specialization is in "industrial law," with special emphasis, *inter alia*, in acquisition, partnering/privatization, law office management, and chemical emergency response. In 1987 Les received the Army Materiel Command Attorney of the Year Award. Interests beyond the law and AMC, include family, USAR, agriculture, investing, antiques, canoeing, billiards, and following the CATS (University of Kentucky Wildcat basketball of course).

# ***AMC Legal Office Profile***

## **Anniston Army Depot, Anniston, Alabama**

### **(Continued)**

**Shelby L. (Mickey) Starling** (13 years) - Mickey has served continuously in the Legal Office since May 86 with the exception of 7 months of military service with the 22d SUPCOM SJA Office in Dhahran, KSA, during Operations Desert Shield and Storm. Since mid 1987 he has been the installation's Environmental Law Specialist while also providing legal support in such areas as occupational health and safety, military justice, chemical surety, and acquisitions/ISSAs. He is also a TQM Coordinator, and a CO2 facilitator. Mickey and his wife, Sara, have 3 children: Todd-25; Laurel-21; and Claire-16. Mickey is a LTC and Legal Support Team leader in the Army Reserve. His interests include church, gardening, and jogging.

**George Worman** (13 years) - George is a Depot Labor Counselor, with primary responsibility for labor and civilian employment law. George also provides legal counsel on installation management issues such as ethics, fiscal law, and government information practices. He is a frequent speaker on prevention of sexual harassment, alternative dispute

resolution, and ethics in government, and he is a member of the installation Risk Reduction Team and Consideration of Others (CO2) Steering Committee. In 1996 he was presented with the Army Materiel Command Preventive Law Award. George lives in Jacksonville, Alabama, with his wife Beverly and daughters Katie, Kendall, and Karoline. He is active in the First United Methodist Church of Jacksonville, the Boy Scouts of America, and the Alabama Alumni Association. In his spare time, he enjoys camping, cooking, and playing the trumpet.

**Susan Bennett** (8 years) - Susan is a Depot Labor Counselor, with responsibility for civilian personnel and equal employment opportunity law. She also provides legal assistance to eligible clients and she provides legal advice and assistance to management in a variety of areas. She is a member of the EEO Action Committee, the Risk Reduction Team and the CO2 Steering Committee. She lives in Jacksonville with her 10 year old daughter. In her spare time she loves to read mystery novels and bake.

**Joan Hayden** (15 years) - Joan is a paralegal and provides support mainly in the contract and environmental law areas. She is responsible for the initial review of contracting and direct sales actions, as well as Interservice Support Agreements. She also provides litigation and administrative hearing support to the labor counselors. She is the ANAD Claims Officer and serves in that capacity on the CAIRA Team. In her spare time she likes to walk, cross-stitch, crochet, and spend time with her 3 children and grandson.

**Kathy Phillips** (14 years) - Kathy is a paralegal and the automation coordinator for the office. Her major responsibilities are to provide litigation and hearing support to the labor counselors and to ensure operation of the office computer system. She is also responsible for initial interviews of legal assistance clients and serves as the office budget coordinator. Kathy and her husband, Ken, have one child, Keith. Kathy is the pianist at her church where her husband Ken serves as Pastor. In addition to her church activities, Kathy enjoys antiquing, gardening, and family time.



# Faces In The Firm

## Hello

### STRICOM

**Laura Cushman** arrived on August 29, travelling about as far as you can from Sierra Army Depot.

### AMCOM

**Rachel Howard** joined Branch C of the Acquisition Law Division in September. A graduate of the University of Alabama Law School, she comes to Huntsville from private practice.

### TACOM-ARDEC

**Peter Giella** joined the office in August from MTMC's office in Bayonne. Peter has 19 1/2 years of federal service. He graduated from Columbia Law School with a LLM from NYU.

## Goodbye

### AMCOM

**Dal Widner** retired on 30 September from the Acquisition Law Division after 10 years of service with MICOM/AMCOM. Best wishes to you.

### CECOM

**CPT Christian Knapp** departed CECOM and the JAG Corps for private practice in Sacramento, California, with the firm Pursley & Glaser, P.C.

### STRICOM

Bids farewell and best wishes to **Mike Lassman** who departed to join the HQ AMC Legal Office (as previously reported).

## Promotion at AMCOM

**CPT Chin-Zen Plotner** was promoted to her current rank in a ceremony on 1 September officiated by Colonel Cornelius, Deputy Chief Counsel/SJA. Captain Plotner is Chief of Legal Assistance in the Office of Staff Judge Advocate.

## TECOM Becomes ATEC

On 1 October TECOM ceases to exist and the US Army Test and Evaluation Command (ATEC) acquires most of the the former MSC's resources, test ranges and facilities.

We in the AMC Legal Community lose 19 counsel.

Best of luck and please stay close to AMC: HQ TECOM's **Laura Haug** and **Mary Raivel**; DPG's **LTC Gaylen Whatcott**, **LTC Gil Brunson**, and **Jack Skeen**; WSMR's **LTC Karl Ellcessor**, **Bob Colvin**, **CPT Justin Tade**, **Bill Fugelso**, **Steve Phillips** and **Mark Melynk**; and YPG's **CPT Charles Hardenbergh**, **MAJ George Figurski**, **Ron Greek**, **David Holbrook**.

The APG Garrison and attorneys [all but 3] go to SBCCOM at Edgewood.

## Birth

Major **Gene** (Environmental/Safety Law) and Angie **Baime** had a baby boy August 25. The world welcomed Henry Ragland Baime with a beautiful sunny day. Congratulations! He's beautiful.